

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim 5 is currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-5 (5 claims) are now pending in this application.

The Office Action of August 31, 2005 and the references cited therein have been considered. In response to the rejections to the claims, the Applicants have amended claim 5 to correct a typographical error, and provide the following comments. As demonstrated, however, each of the rejections is believed overcome, with the application being placed in condition for allowance. Accordingly, reconsideration and allowance of this application is respectfully requested.

On page 2, paragraph 4 of the office action, the Examiner has rejected claims 1-2 and 5 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. The Examiner states "nowhere in the specification teaches or suggests to specially a message only if it is already being transmitted. Does this exclude any of the markings to all other messages?".

In response, Applicants submit that paragraphs 0012 and 0017 of the substitute specification disclose that a message transmitted for the second time is specially marked. There is no teaching or suggestion in the specification that a second transmitted message is not marked and there is no teaching or suggestion in the present application that any other message is specially marked. It is only a second transmitted message that is specially marked. Accordingly, Applicants submit that claims 1-2 and 5 do comply with the written description

requirement as stated above and respectfully request that the Examiner withdraw his rejection of claims 1-2 and 5 under 35 U.S.C. §112, first paragraph.

On page 3, paragraph 6 of the Office Action, the Examiner has rejected claim 5 under 35 U.S.C. §112, second paragraph stating that the term "a transmitter protocol" in line 2 of claim 5 lacked proper antecedent basis.

In response, Applicants have amended claim 5 by deleting the words "using a" and substituting the words "using the" transmitter protocol in line 2 of claim 5. Antecedent basis is provided in claim 5 for the term "transmitter protocol" in the first line of claim 5. Accordingly, Applicants respectfully request that the Examiner withdraw his rejection of claim 5, as amended, under 35 U.S.C. §112, second paragraph.

On page 3, paragraph 8 of the Office Action, the Examiner has rejected claims 1-5 under 35 U.S.C. §102(b) as being anticipated by Garrabrant, et al (USPN: 5,610,595).

The Examiner has identified various features of Garrabrant utilizing terminology of the present application in an attempt to show that Garrabrant anticipates that which is disclosed and claimed in the present application. Applicants respectfully traverse such characterization by the Examiner.

Garrabrant relates to a packet radio communication protocol that uses a sequence index indicating the sequence in which a message is composed at the source station and utilizing that sequence index for message integrity. (See col. 3, lines 17-18.) As best understood by the Applicants, Garrabrant **marks each message transmitted** with a sequence number field 92 (See Col. 9, l. 5-8).

In contrast to Garrabrant, the present application discloses and claims a method that marks a message only if it is the second time it is being transmitted. In other words, the first transmitted message is not marked, if that same message is transmitted a second time it is marked and it is the second marked message that is ignored by the receiver if it is recognized as the message as having been sent once before or if it interprets it as a new message. See paragraphs 0012 and 0017 of the substitute specification. In Garrabrant, since each message

is sequentially indexed, it is an out-of-sequence message that is discarded or rejected by the receiver, not a specially marked message as disclosed and claimed in the present application.

There is no teaching or suggestion in Garrabrant that the initial message is not marked upon the first transmission but is marked upon a second or subsequent transmission as disclosed and claimed in the present application. Garrabrant marks each message with a sequence number field 92.

On pages 4-5, paragraphs 11, 12, 13 and 14 of the Office Action, the Examiner utilizes the language of the present application's claims 2, 3, 4 and 5 respectively, as the Examiner did with claim 1, to cite language in Garrabrant to anticipate that which is disclosed and claimed in the present application. As stated above, since each of claims 2 (as amended), 3, 4 and 5 of the present application only require the marking of the message upon at least a second transmission, Applicants' comments with respect to Garrabrant are also applicable to claims 2-5. Garrabrant marks each message, the present application teaches marking a message only if it is transmitted a second time. There is no disclosure or claim that the message is marked each time as required by Garrabrant.

Accordingly, Applicants submit that Garrabrant does not anticipate that which is disclosed and claimed in the present application and respectfully request that the Examiner withdraw his rejection of claims 1-5 under 34 U.S.C. § 102(b).

On pages 5 and 6, paragraphs 16-18, the Examiner responds to arguments filed by the Applicants on August 5, 2005. The Examiner believes that Garrabrant teaches to "specially mark only the repeated messages; packets which are to be retransmitted are specially marked with a designated set of acceptable sequence numbers". The Examiner cites col. 8, lines 62-27 and col. 9, lines 1-8, lines 20-31 of the Garrabrant to support his assertion.

In response, Applicants submit that Garrabrant does not specially mark retransmitted messages as suggested by the Examiner. The section of the Garrabrant patent cited by the Examiner does not disclose, suggest or teach to mark retransmitted messages. As stated in col. 9, lines 5-8 of Garrabrant, the units or nodes maintain a set of acceptable sequence numbers which designate which sequence numbers that particular unit will receive. The

messages themselves are not marked. The sequence number of Garrabrant is contained in the message independently of whether it concerns a message that will be transmitted for a second time or not. Further, the protocol of Garrabrant, with each message marked, serves only for the avoidance of packet loops, i.e., a repeat count field 96 indicates to a node how often the packet may be forwarded in the network. Applicants submit that that is not the same as specially marking a message only if it is transmitted for a second time. Garrabrant requires each message to be marked with a sequence number field and the present application does not require each message to be marked but only specially marking a message if it is transmitted at least for a second time as disclosed and claimed in the present application. Such special marking is not disclosed or suggested by Garrabrant as discussed above.

The Examiner further comments in paragraph 18 of the Office Action, "it is noted that the features upon which applicant relies (i.e., the first transmitted message is not marked) are not recited in the rejected claim(s)". In response, Applicants submit that the claims of the present application require a special marking if the message is transmitted a second time; Garrabrant does not teach or disclose a special marking of the message being transmitted in the network. Therefore, Garrabrant does not anticipate that which is disclosed and claimed in the present application.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of

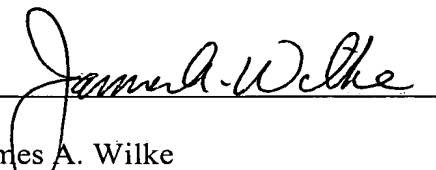
papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R.
§1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date

12-30-05

By



FOLEY & LARDNER LLP

Customer Number: 26371

Telephone: (414) 297-5776

Facsimile: (414) 297-4900

James A. Wilke

Attorney for Applicant

Registration No. 34,279